

TOPICS OF INTEREST TO LAWYERS

Legal Fees

- ◆ Advanced fees
- ◆ Combined payment of earned and unearned fees
- ◆ Credit card payments
- ◆ Fee disputes

Advanced fees

When a client advances funds for legal services, those funds must be deposited into a client trust account and should be held in trust until earned by the lawyer through the rendering of services.

Note: This is not a new requirement. The former trust account rule also required advanced fees to be held in trust.

Fees must be disbursed from the trust account when earned. However, prior to disbursing earned fees, **SCR 20:1.15(g)(1)** requires a lawyer to deliver a **written notice** to the client at least **five business days** before the date on which the fees will be disbursed from the trust account.

The required written notice must include the following:

1. An itemized bill or accounting of services;
2. The amount owed;
3. The anticipated date of withdrawal; and
4. The balance remaining in trust after withdrawal.

SCR 20:1.15(g) Withdrawal of fees from trust account.

(1) Notice to client. At least 5 business days before the date on which a disbursement is made from a trust account for the purpose of paying fees, with the exception of contingent fees, the lawyer shall deliver to the client in writing all of the following:

- a. an itemized bill or other accounting showing the services rendered;
- b. notice of the amount owed and the anticipated date of the withdrawal; and
- c. a statement of the balance of the client's funds in the lawyer trust account after the withdrawal.

(2) Objection to disbursement. If a client objects to the disbursement described in sub. (g) (1), the funds shall remain in the trust account until the dispute is resolved. If the client objects after the funds have been withdrawn, the disputed portion shall be returned to the trust account.

Combined payment of earned and unearned fees

When a client gives a lawyer a single check, which includes: 1) a payment for fees that have already been earned and invoiced, and 2) an advance toward future fees and/or future expenses, what should the lawyer do with that check?

The lawyer must deposit the check into the trust account. After the client's check clears and the funds are available for disbursement, the earned portion of the fees should be disbursed by check to the lawyer or the lawyer's business account. As with any disbursement from the trust account, the lawyer must identify the client and the purpose of that disbursement on the check's memo line. [See, SCR 20:1.15(f)(1)e.1.] The unearned portion of the fee and/or an advance for costs or expenses must remain in the trust account. With respect to the funds that have been earned, the lawyer is not required to send the client a second invoice and wait five days before withdrawing those funds.

SCR 20:1.15(f)(1)e. Disbursement records.

1. **Checks.** Checks shall be pre-printed and pre-numbered. The name and address of the lawyer or law firm, and the name of the account shall be printed in the upper left corner of the check. Trust account checks shall include the words "Client Account," or "Trust Account," or words of similar import in the account name. Each check disbursed from the trust account shall identify the client matter and the reason for the disbursement on the memo line.

Credit card payments

The rule does not allow the use of credit cards or debit cards for the direct deposit or withdrawal of funds from a trust account. Consequently, a lawyer cannot accept an advanced fee by credit card. There are two primary reasons for this:

- 1) **Chargebacks** - Credit card companies can reclaim funds that have been deposited into trust account if the cardholder (in this case, the lawyer's client) disputes the charges. This makes it impossible for a lawyer to safeguard other client's funds that are held in the trust account.
- 2) **Transaction Surcharges** – Credit card companies routinely impose a surcharge for each transaction, which reduces the amount of any payment received by the lawyer. This can, at minimum, create bookkeeping problems for the lawyer. If the surcharge is passed on to the client, an Oregon Ethics Opinion points out the following additional implications:

Interpretation of federal and state law on this issue is beyond the scope of this opinion, but we note that charging the client for the transaction fee may implicate Regulation Z of the Truth in Lending Act, 12 CFR §226, requiring that the lawyer make certain specific disclosures to the client and offer cash discounts to all clients.

Note: SCR 20:1.15(e)(4)e. explicitly allows **earned fees** to be deposited to the lawyer's **business account** via credit card.

SCR 20:1.15(e)(4) Prohibited transactions.

e. **Credit card transactions.** A lawyer shall not authorize transactions by way of credit card to or from a trust account. However, earned fees may be deposited by way of credit card to a lawyer's business account.

Fee disputes

SCR 20:1.15(g)(2) requires a lawyer to hold the disputed portion of a fee in the trust account or return the disputed portion to the trust account until the dispute is resolved. The obligation of the lawyer to hold disputed funds in trust is a critical element of the lawyer's responsibility as a fiduciary.

SCR 20:1.15(g) Withdrawal of fees from trust account.

(2) **Objection to disbursement.** If a client objects to the disbursement described in sub. (g) (1), the funds shall remain in the trust account until the dispute is resolved. If the client objects after the funds have been withdrawn, the disputed portion shall be returned to the trust account.

The Office of Lawyer Regulation will consider alleged violations of SCR 20:1.15(g)(2) under a reasonableness standard that will be based upon the specific circumstances of a given case. In most instances, it is appropriate to assume that, if the client does not object to the withdrawal of earned fees within a reasonable time after the withdrawal of those fees, the lawyer would not have to return the fees to the trust account.

Note: If the client objects to fees prior to the disbursement of those fees, the portion of the fee that is in dispute must remain in trust.

When a dispute arises, a lawyer should first attempt to resolve it with the client; however, if the dispute cannot be resolved, additional steps, including fee arbitration, may be taken to settle the matter. In *Riegleman v. Krieg*, 2004 WI App 85, 271 Wis. 2d 798, 679 N.W.2d 857, the Court of Appeals suggested that, in order to resolve a dispute between a client and a third party over funds held in trust, a lawyer should bring an action for declaratory judgment, pursuant to §806.04, Wis. Stats. This same strategy may be available to a lawyer when a dispute arises with a client over funds held in trust for legal fees.